

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

THOMAS & MARKER CONSTRUCTION CO.,)	
)	Case No. 3:06-cv-406
Plaintiff,)	
)	Judge Thomas M. Rose
v.)	
WAL-MART STORES, INC., et al.,)	
)	
Defendants.)	

ORDER

This matter came to be heard upon the joint motion of the parties pursuant to Fed. R. Civ. P. 60(b) asking this Court to vacate (1) this Court's judgment of January 15, 2009 (Doc. No. 211), and (2) its Opinion and Order, and corresponding judgment, of April 27, 2009 (Doc. Nos. 229 & 230). In accordance with their agreement, the parties also ask the Court to deny Plaintiff's pending motion for attorney fees and expenses (Doc. No. 241) as moot, and dismiss all claims and counterclaims with prejudice.

Considering the parties' desire to settle and circumstances of this case, and the entire record, the Court **GRANTS** the motion:

The Court's judgment of January 15, 2009 (Doc. No. 211), and its Opinion and Order, and corresponding judgment, of April 27, 2009 (Doc. Nos. 230 & 231), are hereby **VACATED**;

The pending motion for attorney fees and expenses (Doc. No. 241), and any other pending motions, are **DENIED AS MOOT**; and

All claims and counterclaims, of any party, are **DISMISSED WITH PREJUDICE**, without any award of costs or fees. This case is closed.

IT IS SO ORDERED.

Date: July 31, 2009

s/Thomas M. Rose

Judge Thomas M. Rose